

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JEANETTE L MITCHELL**

Claimant

**APPEAL NO: 08A-UI-10542-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/GLENWOOD**

Employer

**OC: 06/01/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Jeanette L. Mitchell (claimant) appealed a representative's October 28, 2008 decision (reference 02) that concluded she was not qualified to receive benefits because Iowa Department of Human Services/Glenwood (employer) discharged her for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 17, 2008. Mike Murphy, attorney at law, represented the claimant. The claimant testified at hearing. David Williams, a representative with TALX, appeared on the employer's behalf. Pam Stipe and Kathy King testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 5, 1990. The claimant worked as a full-time residential treatment worker for the employer.

As the result of an April 24 incident when the claimant volunteered to work after she had been drinking, she fell asleep at work instead of watching a resident. When the claimant drove home from work, she was arrested on an OWI charge. Initially, the employer suspended and then discharged the claimant on June 3, 2008, for events that occurred on April 24.

As the result of a grievance filed by the claimant's union, the employer and claimant entered into a settlement agreement. The employer agreed the claimant could return to work if she abided by conditions specified in the settlement agreement. One of the conditions of continued employment the claimant agreed to was that she would not go into a bar, tavern, or other establishment whose primary purpose was the sale of alcoholic beverages for 18 months from the date of her return to work. The claimant signed the settlement agreement and returned to work on July 9, 2008.

On August 18, the claimant received a deferred judgment on the late April OWI charge. The employer started an internal investigation on September 5 to determine if the claimant was eligible to continue working after she obtained a deferred judgment. The employer placed the claimant on a paid suspension. On September 20, an employee reported the claimant had been in a local bar the night before.

When the employer talked to claimant about this report, she admitted she been in a bar on September 19. The claimant received a call from one of her son's friends about being concerned her son was going to get into a fight with another person at a local bar. The claimant decided she was only person who could get her 22-year-old son out of the bar so he would not get into trouble with the law. The claimant went to the bar to talk her son into leaving the establishment.

On September 23, the employer discharged the claimant because she violated the terms of her return to work agreement by being in a bar and on the basis of the information the employer found on her record check evaluation.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the employer knew about the April 24 incidents when the employer entered into the settlement agreement that allowed the claimant to return to work, any problems relating to Iowa Code section 218.13 do not amount to a current act of work-connected misconduct. This may be a business justification for discharging the claimant, but issues under Iowa Code section 218.13 in this case do not amount to a current act of work-connected misconduct for unemployment insurance purposes.

In July 2008 the claimant entered into a settlement agreement with the employer that she would abide by certain conditions to remain employed. One of the conditions the claimant agreed to

was that she would not go into a bar for 18 months from the date of her return to work (July 9, 2008). The evening of September 19, the claimant made a conscious decision to go into a bar to talk her son into leaving the bar. While it may have been difficult for the claimant to stay out of the bar, she agreed she would not go into a bar when she entered into the settlement agreement with the employer in July. Also the evening of September 19, the claimant was on a paid suspension. As a result she knew or should have known her job was in jeopardy. Even though her job was in jeopardy, she made a conscious decision to go to the bar and violate the terms of her return to work agreement. The claimant's failure to follow the conditions of her return to work agreement on September 19 constitutes work-connected misconduct. Therefore, the claimant is not qualified to receive benefits as of September 28, 2008.

**DECISION:**

The representative's October 28, 2008 decision (reference 02) is affirmed. The claimant committed work-connected misconduct when she made the decision to violate the terms of her return to work agreement by going into a bar the evening of September 19, 2008. The claimant is disqualified from receiving unemployment insurance benefits as of September 28, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account remains exempt from charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs